

§ 341.7

the applicant's failure to prosecute the application.

[50 FR 39649, Sept. 30, 1985]

§ 341.7 Issuance of certificate.

(a) If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he or she shall take and subscribe to the oath of renunciation and allegiance, prescribed by part 337 of this chapter, before a member of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

(b) [Reserved]

[55 FR 31037, July 31, 1990, as amended at 66 FR 32147, June 13, 2001]

PART 342—ADMINISTRATIVE CANCELLATION OF CERTIFICATES, DOCUMENTS, OR RECORDS

Sec.

342.1 Notice.

342.2 Service of notice.

342.3 Allegations admitted; no answer filed; no personal appearance requested.

342.4 Answer asserting defense; personal appearance requested.

342.5 Conduct of examination.

342.6 Depositions.

342.7 Report and recommendation.

342.8 Appeals.

342.9 Notice re 18 U.S.C. 1428.

AUTHORITY: Secs. 103, 342, 66 Stat. 173, 263; 8 U.S.C. 1103, 1453.

SOURCE: 28 FR 209, Jan. 9, 1963, unless otherwise noted.

§ 342.1 Notice.

If it shall appear to a district director that a person has illegally or fraudulently obtained or caused to be created a certificate, document, or record described in section 342 of the Act, a notice shall be served upon the person of intention to cancel the certificate, document, or record. The notice shall contain allegations of the reasons for the proposed action and shall advise the person that he may submit, within 60 days of service of the notice, an answer in writing under oath or affirma-

8 CFR Ch. I (1-1-08 Edition)

tion showing cause why the certificate, document, or record should not be canceled, that he may appear in person before a naturalization examiner in support of, or in lieu of his written answer, and that he may have present at that time, without expense to the Government, an attorney or representative qualified under part 292 of this chapter. In such proceedings the person shall be known as the respondent.

[29 FR 5511, Apr. 24, 1964, as amended at 37 FR 2767, Feb. 5, 1972]

§ 342.2 Service of notice.

(a) *Service.* The notice required by § 342.1 shall be served personally by an employee of the Government by delivery to the respondent, or by delivery to a person of suitable age and discretion at the respondent's dwelling house or usual place of abode, or by mailing to the respondent's last known address by registered or certified mail, return receipt requested.

(b) *Proof of Service.* The post office return receipt, or the certificate of the employee serving the notice by personal delivery, setting forth the date and manner of service, shall constitute proof of service. In the case of a mentally incompetent respondent or a child under 14 years of age, service shall be made upon his guardian, near relative or friend, and the person so served shall be permitted to appear on behalf of the respondent.

[29 FR 5511, Apr. 24, 1964]

§ 342.3 Allegations admitted; no answer filed; no personal appearance requested.

If the answer admits all material allegations in the notice, or if no answer is filed within the 60-day period or any extension thereof and no personal appearance is requested within such period or periods, it shall be deemed to authorize the district director, without further notice to respondent, to find the facts to be as alleged in the notice and to cancel the certificate, document, or record. No appeal shall lie from such decision. Written notice of the decision shall be served upon the respondent with demand for surrender of the certificate, document, or record forthwith.

Department of Homeland Security

§ 342.7

§ 342.4 Answer asserting defense; personal appearance requested.

If the respondent files an answer within the prescribed period asserting a defense to the allegations in the notice, or requests a personal appearance, with or without an answer, the district director shall designate a naturalization examiner to consider the case. The respondent shall be notified that he may appear in person or through counsel with any witnesses and evidence in defense of the allegations, and shall be informed of the date, time, and place for such appearance.

§ 342.5 Conduct of examination.

(a) *Authority of naturalization examiner.* The naturalization examiner assigned to consider the case shall have authority to administer oaths or affirmations to respondent and witnesses, issue subpoenas, present and receive evidence, rule upon offers of proof, take or cause depositions or interrogatories to be taken, regulate the course of the examination, take testimony of respondent and witnesses, grant continuances, consider and rule upon objections to the introduction of evidence, make recommendations to the district director as to whether cancellation shall be ordered or the proceedings terminated, and to take any other action as may be appropriate to the conduct and disposition of the case.

(b) *Assignment of additional officer.* The district director may, in his discretion, assign an officer of the Service to examine and cross-examine the respondent and witnesses and to present evidence pertinent to the case. The naturalization examiner designated under § 342.4 may take such part in the proceedings as he may deem necessary.

(c) *Examination.* The naturalization examiner designated under § 342.4 shall, prior to commencement of the examination, make known to the respondent his official capacity and that of any officer assigned pursuant to paragraph (b) of this section, the nature of the proceedings, his right to representation by counsel, to examine or object to evidence against him, to present evidence in his own behalf, to cross-examine witnesses presented by the Government, and shall read the allegations in the notice to respondent and, if nec-

essary, explain them to him. The respondent shall be asked whether he admits or denies the material allegations in the notice, or any of them, and whether he concedes illegality or fraud. If respondent admits all the material allegations and that the certificate, document, or record was procured by fraud or illegality, and no issue of law or fact remains, the naturalization examiner may determine that fraud or illegality has been established on the basis of the respondent's admissions. The allegations in the notice shall be taken as admitted if respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the examination. The examination shall be recorded verbatim except for statements made off the record with the permission of the naturalization examiner.

(d) *Prior statements.* The naturalization examiner assigned to consider the case may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or by any other person during any investigation, examination, hearing, trial, proceeding, or interrogation.

[28 FR 209, Jan. 9, 1963, as amended at 32 FR 3340, Feb. 28, 1967]

§ 342.6 Depositions.

Upon good cause shown, the testimony of any witness may be taken by depositions, either orally or upon written interrogatories before a person having authority to administer oaths (affirmations), as may be designated by the naturalization examiner.

[37 FR 2767, Feb. 5, 1972]

§ 342.7 Report and recommendation.

The naturalization examiner shall prepare a report summarizing the evidence, discussing the applicable law, and containing his findings and recommendations. The record, including the report and recommendation, shall be forwarded to the district director, who shall sign the report, either approving or disapproving the recommendation. If the decision of the district director is that the proceedings be terminated, the respondent shall be so informed.

§ 342.8

8 CFR Ch. I (1–1–08 Edition)

§ 342.8 Appeals.

Should the district director find that the certificate, document, or record was fraudulently or illegally obtained, he shall enter an order that it be cancelled and the certificate or document surrendered to the Service forthwith. Written notification of such action shall be given the respondent, with a copy of the decision, findings and decision of the district director, and he shall be informed of his right of appeal in accordance with the provisions of part 103 of this chapter.

§ 342.9 Notice re 18 U.S.C. 1428.

The notice to surrender a cancelled certificate of citizenship or copy thereof, prescribed by section 1428 of Title 18 of the United States Code, shall be given by the district director in whose district the person who has possession or control of such document resides.

[28 FR 9282, Aug. 23, 1963]

PART 343—CERTIFICATE OF NATURALIZATION OR REPATRIATION; PERSONS WHO RESUMED CITIZENSHIP UNDER SECTION 323 OF THE NATIONALITY ACT OF 1940, AS AMENDED, OR SECTION 4 OF THE ACT OF JUNE 29, 1906

AUTHORITY: Secs. 103, 332, 343, 344, 405, 66 Stat. 173, 252, 263, 264, 280; 8 U.S.C. 1101, 1103, 1443, 1454, 1455.

§ 343.1 Application.

A person who lost citizenship of the United States incidental to service in one of the allied armies during World War I or II, or by voting in a political election in a country not at war with the United States during World War II, and who was naturalized under the provisions of section 323 of the Nationality Act of 1940, as amended, or a person who, before January 13, 1941, resumed United States citizenship under the twelfth subdivision of section 4 of the act of June 29, 1906, may obtain a certificate evidencing such citizenship by making application therefor on Form N-580. The applicant shall be required to appear in person before an assigned officer for interrogation under oath or affirmation upon the application. When

the application is approved, a certificate of naturalization or repatriation shall be issued and delivered in person, in the United States only, upon the applicant's signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and his right to appeal in accordance with the provisions of part 103 of this chapter.

[23 FR 9125, Nov. 26, 1958, as amended at 32 FR 9635, July 4, 1967]

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

Sec.

343a.1 Application for replacement of or new papers relating to naturalization, citizenship, or repatriation.

343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

AUTHORITY: Secs. 103, 324, 332, 343, 344, 405, 66 Stat. 173, 246, 247, 252, 263, 264, 265, 280; 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, 1455.

§ 343a.1 Application for replacement of or new papers relating to naturalization, citizenship, or repatriation.

(a) *Lost, mutilated, or destroyed naturalization papers.* A person whose declaration of intention, certificate of naturalization, citizenship, or repatriation, or whose certified copy of proceedings under the act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law, has been lost, mutilated, or destroyed, shall apply on Form N-565 for a new paper in lieu thereof.

(b) *New certificate in changed name.* A naturalized citizen whose name has been changed after naturalization by order of court or by marriage shall apply on Form N-565 for a new certificate of naturalization, or of citizenship, in the changed name.

(c) *Disposition.* The applicant shall only be required to appear in person before an officer for interview under oath